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The relationship between the European Convention of Human Rights and competition law through the Ships Waste Oil Collector case

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Abstract: This work aims to investigate in an "immediate" and comparative way the relationship that exists between competition law of the European Union law and the European Court of Human Rights. The right to competition as a separate right does not exist in the European Convention of Human Rights. But the connection, relationship, mixing, dialogue of notions and rights protected and safeguarded between two different courts has already existed for years with various paths of thought and ideology, arriving in our days at the Ships Waste Oil Collector case which allows us once again to speak for protected rights and right to competition.

Keywords: ECHR; ECtHR; CJEU; right to competition; right to life; personal data.

European Convention of Human Rights and competition law

Talking about competition law in the context of the protection of human rights and especially through the European Convention of Human Rights (ECHR) is very difficult and complex matter but even jurisprudence is rare until now, therefore, allow us to arrive at certain conclusions and comments.

In particular, we notice the Ships Waste Oil Collector B.V. and others v. Netherlands case in the field of competition. It is a case presented to the European Court of Human Rights (ECtHR) that certainly allows us to investigate and to refer to difficult topics such as the legitimacy of the transmission of data and information and the telephone interceptions in the context of criminal investigations.

We are talking about criminal investigations carried out against the Dutch Competition Authority, currently under the name of Autoriteit Consument en Markt (at the time of the relevant events it bore the name of Nederlandse Mededingingsautoriteit (NMA)). An authority that used data during administrative proceedings with the aim of ascertaining competitive violations.

A particular case that goes outside the scope of the European Union law. It is very interesting even difficult to arrive at a case of this kind that concerns competition in the ECtHR invoking violation of the rights safeguarded and protected by the European Convention of Human Rights (ECHR). It has to do

with parallel rights given that there is no precise right within the ECHR relating to the right to competition. Perhaps because competition law is related to business and not to personal, individual and/or rights like those that are included in the law of the ECHR[1]. Rights that are enjoyed first and foremost by man as instruments and elements of international rights (Taylor, 2020)[2], where the ECHR applies only to natural persons as can also be seen through Art. 1 ECHR (Dopplinger, 2021).

Of course, private individuals working in a company are protected by the ECHR. For example art. 10, par. 1 through the right to freedom of expression has not prevented states from submitting an authorization regime for companies carrying out work in the broadcasting, cinematographic or television sectors. Moreover, art. 1 of the protocol n. 1 ECHR (Sudre, 2021) is referred to the right to property protecting natural persons who have the right to respect their assets and art. 34, which refers to individual appeals by private individuals and non-governmental organisations. It is obvious as well as logical that not all human rights are part of a general suitability to be invoked by every legal person and that they are susceptible in a concrete way (Dopplinger, 2021).

The rights that can be invoked are for example the right to property, to due process, freedom of expression, to

1CJEU, C-309/99, Wouters and others of 19 February 2002, ECLI:EU:C:2002:98.

2We mention Art. 2(1) ICCPR and Art. 1, par. 2 of the American Convention on Human Rights.

correspondence and to housing. These are rights that began their journey from the jurisprudence of the early years of the ECtHR, recalling the Sunday Times v. United Kingdom case (Van Aakken, A., Motoć, I. (eds.). (2018); Kosař, Petrov, Šipulovà, Smekal, Lyhnànek, Janovský, 2020; Villiger, 2023)[3].

In such case the ECtHR spoke for violation of the right of a society based on freedom of expression, according to Art. 10 of the ECHR. Over the years, various thoughts followed for violation of the rights of the ECHR (Oliver, 2022) arriving only in 1992 to speak for competition (Wennerström, 2023)[4]. Very often the indispensability relating to full jurisdiction over antitrust proceedings is a reality for the legal world but not a habit for the law of the ECHR.

The antitrust and competition rules according to national legislation and in the law of the European Union leave few provisions to be applicable outside the European context, from the European Commission and from national judges as it is stated that:

"(…) European Court of Human Rights has long recognized that the implementation of administrative law, including the imposition of fines, is not incompatible with Art. 6, no. 1 ECHR (…). To satisfy the needs posed by this provision it is not necessary for this implementation to be fully "jurisdictionalized", there must be sufficiently strong procedural guarantees and effective judicial control with full competence to review administrative decisions (…)" (Sibony, 2012)[5].

3ECtHR, Sunday Times v. United Kingdom of 26 April 1979.

4ECtHR, Société Stenuit v. France of 27 February 1992.

5Conclusions of the Advocate General Eleanor Sharpston in case: C-272/09 P, KME Germany and others v. Commission of 10 Febraury 2011,

This is a particular profile of the right to competition in an enforcement system. Art. 6 ECHR is also part of the right to a fair trial (Sudre, 2021; Rainey, Wicks, Ovey, 2021; Villiger, 2023) and a prerequisite for the existence of a judicial review, that is also extended with regard to the antitrust administrative provision and includes the full jurisdiction of the ECtHR. The guarantees offered by the ECtHR are part of the independent administrative authorities (Ravasi, 2017; Sudre, 2021)[6].

The safeguarding of jurisdiction also in the criminal sector and in competition proceedings includes sanctions and antitrust rules that equate in a substantial and less material way with the not exactly criminal nature of proceedings that have to do with competition matters. Thus, antitrust sanctions allow the judges of the ECtHR to talk about violations in the field of competition and to constitute administrative offenses. The qualification in the criminal field is attributable to the public nature of the interests which are protected by the repressive and preventive nature of the sanctions and imposed in certain ways with full severity on a case-by-case basis (Oliver, 2012)[7].

Right to competition and Art. 6 ECHR

The right to a fair trial according to Art. 6 ECHR and everything that includes this right is a reality. The ECtHR has many times

ECLI:EU:C:2011:63, I-12789, parr. 46-52.

6ECtHR, Grande Stevens and others v. Italy of 4 March 2014.

7ECtHR, A. Menarini Diagnostics srl v. Italy of 27 September 2011.

expressed its opinion considering the convention and the restrictions affecting competition to be harmful to substantive law. Remember the old case Markt Intern Verlag GmbH and Klaus Beermann v. Germany (Dzehtsiarou Garde 2022)[8]. A memory of a publishing house that published bulletins on market trends was activated in German courts due to the limits imposed. In practice, the publication of a bulletin concerning the commercial practices of a particular company was prohibited, considering that such conduct interfered in an unjustified manner in the competition sector.

Mainly for the national judges the right to freedom of expression did not prevail general interests of an economic nature. In the context of competition ruled on the violation of Art. 10 ECHR, the ECtHR itself stated that:

"(…) an undertaking which seeks to set up a business inevitably exposes itself to close scrutiny of its practices by its competitors. Its commercial strategy and the manner in which it honors its commitments may give rise to criticism on the part of consumers and the specialized press (…) the publication of items which are true and describe real events may under certain circumstances be prohibited: the obligation to respect the privacy of others or the duty to respect the confidentiality of certain commercial information are examples (…)" (Kellerbauer, Klamert, Tomkin, 2019)[9].

The court did not consider the restriction of freedom necessary according to Art. 10 ECHR (Sudre, 2021; Villiger, 2023).

In the Central Europe case (Paparinskis, 2013)[10], which had to do with the freedom of expression, Articles 6, 14 ECHR and 1

8ECtHR, Markt Intern Verlag GmbH and Klaus Beermann v. Germany of 20 November 1989.

9ECtHR, Markt Intern Verlag GmbH and Klaus Beermann v. Germany, op. cit.

10ECtHR, Centro Europa 7 Srl and Di Stefano v. Italy of 7 June 2012.

of the Protocol, the non-assignment to the appellant of the relevant radio frequencies which were necessary for the television broadcasts of the same, were part of a framework where the appellant was not able to participate in the television broadcasting market for a period of time exceeding ten years thus obtaining a concession underlining that:

"(...) satisfy the foreseeable requirement under the convention and deprived the company of the measure of protection against arbitrariness required by the rule of law in a democratic society (...) shortcoming resulted, among other things, in reduced competition (…)" (Paparinskis, 2013).

The Sociétés Colas a Ships Waste Oil Collector case and Art. 8 ECHR

Art. 8 ECHR referring to private and family life with a rich jurisprudence up to now from the ECtHR has taken into consideration as an absolute right the conditions that are part of the public authorities where the interference also constituted the related measures of a democratic nature, necessary for national security and to the well-being of each country, such as defense of order and prevention of crimes, protection of the health and rights of others.

This is a right that we also find in the Charter of the Fundamental Rights of the European Union (CFREU) according to par. 52, sub-par. 3 where the scope of the rights are identical and also part of the rule of the ECHR where the limitations are legitimately brought and authorized according to Art. 8, par. 2

ECHR (Villiger, 2023).

These are different cases in the law of the ECHR which balance the violation of the right and the respect for family and private life, as for example the Sociétés Colas Est and others v. France case (Wiśniewski, 2023)[11], where the ECtHR took into consideration Art. 8 ECHR relating to headquarters, offices, premises and businesses. These are appellants where the construction company and the French competition authorities[12], within the scope of the inspections, have seized thousands of documents.

The authorities have exhausted the relevant remedies and the companies have presented and supported the searches and seizures as supervisory conduct and/or the restriction that constituted a violation of Art. 8 ECHR. The ECtHR stated, in this regard, that:

"(...), on account of the manner in which they were carried out, constituted intrusions into the applicant companies' "homes"[13] (…) relevant legislation and practice should therefore have afforded adequate and effective safeguards against abuse (…) exclusive competence to determine the expediency, number, length and scale of inspections (…) the inspections in issue took place without any prior warrant being issued by a judge and without a senior police officer being present (…) challenged operations in the competition field cannot be regarded as strictly proportionate to the legitimate aims pursued (…)"[14].

Authorization was obviously not sufficient given that the interference with rights according to Art. 8 ECHR were

11ECtHR, Sociétés Colas Est and others v. France of 16 April 2002.

12Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF).

13ECtHR, Sociétés Colas Est and others v. France, op. cit., par. 46.

14ECtHR, Sociétés Colas Est and others v. France, op. cit., par. 47.

proportionate to a judge ruling on the matter.

We recall the Vinci Construction case[15] relating to the seizure of the contents of various emails of a professional nature that were employed by companies that were the subject of inspection. This case was part of an antitrust investigation, thus, concluding that the review of documents that are identified by the companies are not relevant according to the purposes of the investigation and/or covered by professional secrecy, which examined the formal regularity of the relevant procedure without being able to examine the circumstances and compliance with the principle of proportionality.

Some recent cases

The history of the jurisprudence of the ECtHR in the field of competition continues arriving at the related cases: Ships Waste Oil Collector B.V. v. Netherlands[16], Janssen de Jong Groep B.V. and others v. Paesi Bassi[17] and Burando Holding B.V. and Port Invest B.V. v. Netherlands[18], all three of 16 March 2023.

The Dutch Ministry of Construction has started an investigation into the company Ships Waste Oil Collector B.V. given that it was a company under Dutch law for liquid ship waste in the

15ECtHR, Vinci Construction e GTM Génie Civil et Services v. France of 2 April 2015.

16ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands of 16 May 2023.

17ECtHR, Janssen de Jong Groep B.V. and others v. The Netherlands of 16 May 2023.

18ECtHR, Burando Holding B.V. e Port Invest B.V. v. The Netherlands of 16 May 2023.

Rotterdam region as well as the Burando Holding B.V. and Port Invest B.V. for environmental crimes. The criminal investigation was subject to authorization from the competent judge and interceptions of telephone records of company employees had relationships with employees of other appellant companies. Conversations that are considered of interest to the competition authority given the price-fixing indications. Transmission of information to the authority was required and authorized by the public prosecutor of the case.

Adding the company of the Janssen de Jong Groep B.V. who was suspected of corruption in the context of tenders due to the related criminal investigation of companies for the related telephone interceptions subject to authorization from the competent judge. The transmission of the conversations allowed various offenses of a competitive nature to be committed to the competent authority and obviously after the relevant authorization from the public prosecutor. The relevant sentences arrived on 16 March 2023 and established violations of the ECHR and in particular of art. 8. The related transmission of conversations which were intercepted and subject to the foreseeability requirements of the appellant companies actually compromised the relevant investigations and perhaps the Court admitted the transmission of data and collected information, which arrived without the employees knowing nothing[19].

19ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands, op. cit., par. 50;

The company that offered the telephone transmission of the data was listed by the WJSG. It was reported to the public prosecutor that the data were "charged with enforcement of legislation"[20]. Within this context the ECtHR argued that:

"(…) the applicable law had provided the appellant companies with adequate indication as to the circumstances and conditions under which the prosecutor's office could transmit the intercepted information (…). Contacts between the investigators and the officials of the competition authorities were sufficiently predictable. In fact, on the one hand, within the national legal framework, the competent public authorities should have coordinated in order to identify the data and information relevant for the protection of the general interest (…). There was no reason to believe that someone other than the investigating parties was responsible for selecting the data that the NMA subsequently had access to or had access to more information than was necessary to achieve the authorized purpose[21] (…). Nature and extent of the interference in the present case, in combination with the safeguards that were in place under the domestic legal framework, including the precautions taken when communicating the data obtained through interception of communications to another public authority, the Court is satisfied that the system was adequately capable of avoiding abuse of power and finds that article 8 did not require ex ante authorisation by a court in the context at issue[22] (…). The domestic courts carefully examined the facts, assessed the lawfulness of the transmission under the WSJG and conducted an adequate balancing exercise under Article 8 of the Convention between the interests of the applicant company and the authorities' interests to protect the economic well- being of the country (...)"[23].

For these reasons the above case it was reported by the ECtHR,

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Janssen de Jong Groep B.V. and others v. The Netherlands, op. cit., par. 57; Burando Holding B.V. e Port Invest B.V. v. The Netherlands, op. cit., par. 55.

20ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands, op. cit., par. 54; Janssen de Jong Groep B.V. and others v. The Netherlands, op. cit., par. 57; Burando Holding B.V. e Port Invest B.V. v. The Netherlands, op. cit., par. 59.

21ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands, op. cit., par. 57; Janssen de Jong Groep B.V. and others v. The Netherlands, op. cit., par. 60; Burando Holding B.V. e Port Invest B.V. v. The Netherlands, op. cit., par. 63.

22ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands, op. cit., par. 67; Janssen de Jong Groep B.V. and others v. The Netherlands, op. cit., par. 70; Burando Holding B.V. e Port Invest B.V. v. The Netherlands, op. cit., par. 73.

23ECtHR, Ships Waste Oil Collector B.V. v. The Netherlands, op. cit., par. 68; Janssen de Jong Groep B.V. and others v. The Netherlands, op. cit., par. 71; Burando Holding B.V. e Port Invest B.V. v. The Netherlands, op. cit., par. 74.

therefore, it excluded the violation of Art. 8 and 13 ECHR (Villiger., 2023).

The dissenting opinions in the Ships Waste Oil Collector rulings

The sentence just reported in the previous paragraph did not have a unanimous character and due to dissenting opinions of the judges the way was opened for a referral to the grand chamber of the ECtHR.

A referral based exceptionally on art. 43, par. 1 where for exceptional cases and situations each case can request to be referred to the grand chamber, to a panel of five judges who accepts the request at the moment that according to par. 2 of the same article:

"(...) the issue which is the subject of the appeal raises serious problems of interpretation or application of the convention or its protocols, or in any case an important question of a general nature (...)".

A first and related reference for concluded cases was given on 25 September 2023 mainly due to the importance of the application and interpretation of the ECHR finding members of the judging panel. The dissenting opinions of three judges[24] were based on the request for referral in the appellant companies and the related ex novo proceedings before the Grand Chamber. The permissions were authorized and considered to be relevant because it was reported that:

24See also the dissenting opinion of judges: Yonko Grozev, Darian Pavli and Ioannis Ktistakis.

"(...) judicial authorisation was granted for the purposes of an unrelated criminal investigation on the basis of reasonable suspicion of a certain criminal activity (…) the authorising judge could not have been aware that "by-catch" from that surveillance would subsequently reveal indications of a different kind of violation of the law (namely, anti-competitive behaviour) (…). The original authorisation cannot be considered to have justified further use and transfer of any by-catch data for possible administrative investigations that might come in many different forms and levels of gravity (…). It is also relevant that the secondary investigation was not of a criminal nature or such that would have been capable of justifying secret surveillance measures on its own (...)"[25].

The ECtHR also took a position in the transfer of data between the two national authorities (Lubin, 2022)[26] that guarantees were needed so that:

"(...) the circumstances in which such transfer may take place are clearly specified by domestic law (...) and the transfer is subject to independent control (...)"[27].

Data minimization as a principle was a basis for the ECtHR[28]. Equally important is that domestic law had to establish a minimum level of gravity regarding the relevant cases justifying the transfer for the collection of information relating to criminal investigations and also for cases which did not have a criminal nature but fell within the relevant use of wiretaps. This is an approach that was included in fishing expeditions, i.e. to avoid the evasion of guarantees regarding search means for evidence.

Law enforcement agencies and public authorities in general[29] had to transfer information and data that were necessary to also

25See the dissenting opinion, par. 5.

26ECtHR, Big Brother Watch and others v. United Kingdom of 25 May 2021.

27See the dissenting opinions, par. 7.

28CJEU, C-268/21, Norra Stockholm Bygg AB of 2 March 2023, ECLI:EU:C:2023:145, not yet published.

29Dissenting opinions, par. 8.

allow other investigative objectives. The related dissenting opinions were based on the principle of proportionality due to the use of the intercepted information. The proportionality of the transmission was the subject of further examination taking into account the possible personal and sensitive nature of the data in question[30].

The data were collected for certain purposes in an explicit and legitimate manner and processed in a manner that was not incompatible with the relevant purposes[31], thus specifying the guarantees before the transfer of the data obtained to the public authorities and transferring them in a legitimate manner justifying thus the interceptions to a procedure of criminal proceedings as a case for subjects investigated in two different and connected proceedings[32].

The dissenting opinions are inspired by the Court of Justice of

30CJEU, C-268/21, Norra Stockholm Bygg AB of 2 March 2023, op. cit., par. 19. "(…) the absence of a written agreement to commit illegal acts would seem to us to be the norm rather than an exception providing justification for special measures. Secondly, the fact that the Competition Authority has no legal powers to request secret surveillance measures suggests that it is normally considered to be capable of fulfilling its competition law enforcement functions without resorting to surveillance – and that exceptional circumstances would be needed to justify such use. Finally, unlike the alleged instances (…) that gave rise to the original surveillance authorisation, price-fixing practices tend to have above- the-surface aspects that can serve as a starting-point for administrative investigations (…)".

31Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89-131

32Dissenting opinions, par. 9.

the European Union (CJEU)[33]. They have taken into consideration the application of national rules according to the information that comes from criminal and related investigations to the characteristics of the crime, the corrupt nature and declassified in the opinion of the public prosecutor using the scope of investigations into offenses which are regulated according to an illicit conduct, therefore, incompatible with the directive which was part of the privacy and electronic communications[34].

The judges of the third chamber took into consideration the relevant instructions from the prosecutor's office and the indications which specifically concerned the seriousness of the infringements and the non-criminal nature with which to allow the transmission of the interceptions as well as the interference with the law of Art. 8 ECHR[35].

The lack of reasons are adequate for judicial review. In fact,:

"(...) any reasoned decision by the prosecutor in the present case means that neither the national authorities, nor this Court are in a position to carry out a reliable and intelligent assessment as to the quality of the balancing exercise carried out by the public prosecutor (…)"[36].

33See the Conclusions of the Advocate General Manuel Campos Sánchez-Bordona in case: C-162/22, Lietuvos Respublikos generalinė prokuratūra of 30 March 2023, ECLI:EU:C:2023:266, not yet published.

34Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37-47. See also the case: C-162/22, Lietuvos Respublikos generalinė prokuratūra of 7 September 2023, ECLI:EU:C:2023:631, not yet published.

35Dissenting opinions, par. 13.

36Dissenting opinions, par. 14.

Are there any limits for antitrust investigations?

When answering the question of whether or not there are limits to antitrust investigations, it is very difficult to immediately say yes or no. It must be taken into consideration whether the use of wiretaps in an administrative proceeding for anti-competitive offenses may also have some corrections. Wiretapping an antitrust proceeding is taken into consideration via the Goldfish case[37].

In this case we noticed the violation of Art. 101 TFEU (Vogel, 2020) and related audio recordings that are made illegally by a third party at a procedural level, where the investigative powers of the European Commission are not part of the use of wiretaps[38].

Perhaps in one area of a general framework the European Commission requested information and collected statements through the support of agents, who were authorized by the member itself and due to the verification procedure of the relevant companies and associations, groups of companies (Gaullard, 2020; Decoco, Decoco, 2021)[39].

The tribunal of the first instance considered that:

37Tribunal of First Instance, T-54/14, Goldfish BV and others v. European Commission of 8 September 2016, ECLI:EU:T:2016:455, published in the electronic reports of the cases.

38Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1-25, in particular artt. 17ss.

39See in particular Art. 20 of Regulation n. 1/2003.

"(...) the aforementioned recordings, even if made by a private individual who participated in certain conversations, and if obtained lawfully by the Commission during an inspection in the offices of one of the companies involved in an agreement, constituted admissible evidence (..) evidence can be used even if obtained in violation of the right to respect for the private life of the person referred to in Articles 8 ECHR and 7 CFREU (…) if, on the one hand, the appellant in question was neither deprived of a fair trial nor of his rights of defense and, on the other hand, this element did not constitute the only means of proof used to justify the sentence (...)"[40].

The probable need for proof with sufficient ample manner and according to the circumstances as in the Ships Waste Oil Collector case for the relevant companies also had the right to access an effective trial. Full jurisdictional protection was necessary for cases of a criminal nature.

These are considerations which also find a basis in the domestic context and in the use of excerpts in relation to telephone interceptions. Thus the national law on administrative proceedings should first of all regulate antitrust and the use of objectives relating to the investigation and evidence collected at a criminal trial and requiring that:

"(…) the evidence has been acquired in accordance with the rules of procedure (...) the right of defense is safeguarded (...) evidentiary material formed and has been the subject of autonomous evaluation activity (...)"[41].

These are notions that are known and are part of the domestic criminal procedure codes of every democratic state relating to the matter of wiretapping in criminal proceedings, which are validated, authorized and are not in conflict with constitutional guarantees and safeguard the freedom, secrecy of communications.

40T-54/14, Goldfish BV and others v. European Commission, op. cit., par. 62.
41T-54/14, Goldfish BV and others v. European Commission, op. cit., par. 63.

The Goldfish case established some important elements for the evolution and integration in the sector of a criminal procedural process, such as for example the documentation and transmission authorized by each prosecutor; that companies must have access and the possibility to prove the related charges as evidence and the evaluation and control by the competition and market authority to limit the non-acquisition of the relevant documentation in the criminal investigation as well as the use of permissible interceptions.

These are elements that come from every democratic society and from a national level for the use and verification of violations that have to do with antitrust law as sources of evidence and in criminal proceedings as they are also not found in conflict with the rules of the ECHR.

The ECHR about to legal interferences is based on Art. 8. Legitimate and necessary objectives are part of the national legislation for telephone interception as well as investigations for the repression concerning anti-competitive offences. Thus the administrative judge before such a trial allows companies to have the opportunity to defend themselves on every point of law and fact as well as the elements and means used for investigations concerning the repression of anti-competitive offenses according to the respect and non-compliance violation of treaty law.

The Grand Chamber has offered a use for the interception of communications. The antitrust investigations are probably based on the principle of proportionality and the dissenting opinions of judges who carry out the relevant control.

As far as the CJEU is concerned, it was based on the fundamental right to a fair trial, also considering other factors such as the probability of interference having to do with private life and the legality of the interception. These are factors that are considered by the jurisprudence of the Union.

The CJEU followed the path of an effective transposition of contents where the jurisprudence of the ECtHR also allowed for new elements in the exegesis of the law of the Union.

According to the D.B. v. Consob case[42] the CJEU took into consideration the relevant jurisprudence of the ECtHR, overcoming the past and the restrictiveness regarding the right to silence as well as anti-competitive crimes for companies. The ECtHR moved towards the path of necessity, which indicated cases which allowed the transmission of interceptions and interrogations on various grounds and at the time of transmission as well as by-catch to proceedings relating to interception which cannot normally be authorized as in investigations antitrust.

42CJEU, C-481/19, D.B. v. Consob of 2 February 2021, ECLI:EU:C:2021:84, not yet published.

It is not easy every time take into consideration what is pre-established by the national judge. By interpreting the internal rule in a manner compliant with the conventional provision according to the limits permitted by the relevant texts of the rules, is necessary a compliant interpretation. The latter is reinvigorated but does not find full effectiveness and impact at every national order.

The compliant interpretation has a general character, which includes the ECHR as well as national law, also extending in an indistinct manner to the judicial bodies of a national nature a mandatory given the power of the national judge and the binding nature of the compliant party to be subject to control and receive the relevant sanctions as well as mainly to respect any other alternative that will not be recessive, respecting, however, the possible illegitimacy perhaps from a constitutional point of view but also to try to invalidate the national law, which perhaps will try to guide European jurisprudence.

Doubts of compatibility with the ECHR are evident in the Ships Waste Oil Collector case where with many problems of an applicative and interpretative nature from the convention tries to establish the use of information coming from the way of wiretaps and antitrust proceedings also laying the foundations for a constantly evolving legislation and jurisprudence for sensitive data and electronic communications in a domestic,

European and international context.

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